

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, 5-8, and 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Gendala* (US 6131779) in view of *Magee* (US 6394329).

Gendala discloses a universal carrying device, comprising: a first substantially rectangular/planar cover (14a) having a ledge (50), wherein the ledge reduces the chances of the universal carrier from dislodging from behind a user's belt; having a slot (Figs. 6, 7; belt clip forms slot; intended use interpretations apply) for holding a card; a substantially rectangular carrier having an opening (Fig. 8; rectangular with a curve; alternative see *Magee* panel structure substituted below) and a hinge (Fig. 10 @24) attaching the first substantially rectangular cover to the first substantially rectangular carrier; the first substantially rectangular cover snap fits (Figs. 7; col. 4, ll. 10-15) with the substantially rectangular carrier; a lip (14c) along a portion of the substantially rectangular cover; the first substantially planar cover has a flange (14b) along a portion of the lip.

Gendala does not expressly disclose the second carrier being planar (rather being curved) or having the opening shape with hinge line as claimed.

However, *Magee* discloses a substantially rectangular carrier/cover that is substantially planar, has a hinge line (158; see below) that divides the opening, wherein the hinge line divides the substantial rectangular carrier/cover into a first part and a second part and allows the first part to pivot about the hinge line (flexibility disclosed by *Magee*; see below); the hinge line extends across the opening; the opening has a narrow end and a fat end; or wherein the substantially rectangular carrier has a hinge line that divides the opening into a first portion and a second portion, wherein the hinge line divides the substantial rectangular carrier into a first part and a second part and allows the first part to pivot about the hinge line (Fig. 23).

Where *Magee* discloses the accordion pleats provide additional flexibility to the panel, which when loaded with a bottle clearly results in the lower portion pivoting around the accordion pleat point due to the weight of the bottle hanging down, and applicant has not specifically alternatively defined the terms in the specification as originally filed, the examiner considers the accordion pleats to meet the broadest reasonable scope of "hinge line". The examiner further notes that the closed opening formed by *Magee* would clearly be recognized by one of ordinary skill in the art at the time the invention was made to hold a bottle more securely than the open ended opening taught by *Gendala* which would allow a bottle to slip out more easily.

At the time of the invention, it would have been obvious to a person having ordinary skill in the art to replace the bottle retaining panel structure taught by *Gendala* with that taught by *Magee*, in order to more securely hold the bottle.

Additionally, because *Gendala* and *Magee* both bottle retaining panel structures for belt clip use, it would have been obvious to one of ordinary skill in the art to substitute the panel/opening structure taught by *Magee* for that taught by *Gendala* to achieve the predictable result of securely holding a bottle.

Regarding the limitation, "a carrier adapter that engages the opening", the examiner is applying the following interpretation. Where applicant has failed to give a special definition, the broadest reasonable common meaning of the term "adapter", "somebody or something that changes something", will be applied. As such, the examiner considers the user's fingers, which can engage the openings in the combination recited above, to be "adapters" because they apply a change to the carrier by helping remove its contents. The examiner maintains this uncontested interpretation from the previous actions, absent any additional structural limitations added.

Regarding the newly added claim limitations requiring "wherein the first substantially rectangular cover and the second substantially rectangular cover fold flat so that it can fit in a user's pocket", the examiner has carefully considered the limitation but does not consider it to patentably define around the combination presented above. First, the examiner refers to Fig. 7 of the base reference *Gendala* where the panels are clearly folded flat, arguably save for the

curved section. That curved section was clearly replaced by the flat panel taught by Magee in the rejection above, rendering any ambiguity as to the curved section irrelevant. While no individual reference may expressly disclose the device fitting into a pocket, the examiner considers the combination to clearly be capable thereof.

The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by the combination which is capable of being used in the intended manner, i.e., (folded flat and placed in a user's pocket). There is no structure in the combination that would prohibit such functional intended use (see MPEP 2111). The examiner also notes that *Blanchester* (used below) also clearly teaches the same flat folding functionality (Figs. 3, 4) and the same interpretation set forth here applies.

3. Claims 2 and 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Gendala* in view of *Magee* as applied to claims 1, 3-8, and 10-13 above, and further in view of *Blanchester* (US 6880714).

Gendala as modified by *Magee* discloses the limitations of the claim(s) as detailed above except does not expressly disclose the hinge being a living hinge.

However, *Blanchester* teaches using a living hinge (30) to connect and allow snapping closed a bottle carrier similar to both *Gendala* and *Magee* (Figs. 1-4). The examiner further notes the reduced complexity and costs of manufacturing of using a living hinge rather than a multi-part pin based hinge or

accordion pleats to provide flexibility and considers the advantages of such to clearly have been obvious to one of ordinary skill in the art at the time the invention was made.

Additionally, because *Gendala* and *Blanchester* both teach hinged bottle retaining panel structures for belt clip use, it would have been obvious to one of ordinary skill in the art to substitute the living hinge taught by *Blanchester* for the mechanical taught by *Gendala* to achieve the predictable result of securely holding a bottle, allowing pivoting movement, and reducing costs and complexity of manufacturing. It would also have been obvious to replace the accordion pleats of *Magee* with a living hinge live that taught by *Blanchester* to provide the same flexibility, consistency in manufacturing techniques, and reduced costs and complexity of manufacturing as living hinges are clearly easier and cheaper to manufacture than a folded accordion pleat structure.

Any surface of the above noted combinations can be a printing surface and Figs. 4,5 of *Gendala* best show the cutouts (at edges of panel).

Response to Arguments

4. Applicant's arguments with respect to claims 1-3, 5-8 and 10-20 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon

hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicant's argument that the examiner has improperly interpreted the limitation "carrier adapter" does not persuade the examiner because, although claims are read in light of the specification, limitations from the specification cannot be read into the claims where they do not exist,

Quoting MPEP 2106, "While it is appropriate to use the specification to determine what applicant intends a term to mean, a positive limitation from the specification cannot be read into a claim that does not itself impose that limitation. A broad interpretation of a claim by USPTO personnel will reduce the possibility that the claim, when issued, will be interpreted more broadly than is justified or intended. An applicant can always amend a claim during prosecution to better reflect the intended scope of the claim. While it is appropriate to use the specification to determine what applicant intends a term to mean, a positive limitation from the specification cannot be read into a claim that does not itself impose that limitation. A broad interpretation of a claim by USPTO personnel will reduce the possibility that the claim, when issued, will be interpreted more broadly than is justified or intended. An applicant can always amend a claim during prosecution to better reflect the intended scope of the claim."

Applicant's disclosure presents a multitude of structures called carrier adapters in the specification, all of which engage the opening as the users fingers can, and the examiner considers this to meet the scope of the claims without additional structural or functional limitations further clarifying. The examiner is not persuaded because applicant's argument would require reading the structure of the carrier adapters into the claim, where only a nominal recitation currently exists.

Applicant's argument that Magee does not teach the opening shape as claimed does not persuade the examiner because Fig. 3 clearly shows the fat end of the opening closer to the belt side of the carrier, exactly where the hinge is located in the combination.

Applicant's argument that Gendala does not teach the snap fit does not persuade the examiner because the examiner considers the rotational urge that happens when the boss is engaged to meet the broadest reasonable interpretation of "snap-fit" where the applicant has not provided a specific alternative definition. The examiner also notes that the breadth of this claim language could be met by the snap-fit of the two panels at the hinge point of the Gendala device where the panels fit together to create hinging action.

For the reasons stated above as well as those set forth in the rejections above, the examiner is not persuaded and the rejection is maintained.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PETER HELVEY whose telephone number is (571)270-1423. The examiner can normally be reached on M-Th 8:00 - 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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/P. H./
Examiner, Art Unit 3782
May 21, 2011

/Justin M Larson/
Primary Examiner, Art Unit 3782
5/22/11